

Docket Number: 009554-0308963

Client Reference: 4 CONT - 2



IPW
PATENT APPLICATION *\$*

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re the Application of

MARK H MILLER, et al.

Group Art Unit: 3643

Application No.: 10/806,223

Examiner: KURT C. ROWAN

Filed: March 23, 2004

Confirmation No.: 1747

For: COUNTERFLOW INSECT TRAP

INFORMATION DISCLOSURE STATEMENT

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Information Disclosure is being filed to bring to the Examiner's attention certain issues raised during a litigation involving U.S. Patent No. 6,286,249 ("the '249 patent"), to which this application claims priority. The litigation is a Section 337 Investigation currently pending before the International Trade Commission and is captioned "In the Matter of Certain Insect Traps," Investigation No. 337-TA-498.

In that litigation, it is the undersigned's understanding that the opposing party took various positions with respect to the invalidity of the claims of the '249 patent. While the claims of the '249 patent are not the same as the claims pending in this application, to ensure full compliance with the duty of disclosure, the undersigned is bringing this information to the attention of the Examiner. Specifically, the opposing party asserted that the claims of the '249 patent are invalid over The Galaxie Device, U.S. Patent No. 5,301,458 to DeYoreo, U.S. Patent No. 5,255,468 to Chesire, JP Application No. 64-14128 to Kurosawa, the Duplex Cone by Francie and Frier (see pages 580-582 of Chapter 6 from Service, Mosquito Ecology: Field Sampling Methods), and/or the Skeeter-Eater. To the extent these materials have not been disclosed in a prior Information Disclosure Statement, they are being filed herewith.

None of these positions were ruled upon, as the opposing party and the patent owner settled the litigation with respect to the '249 patent. Regardless, the patent owner

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contends that it would have been successful on the issue of validity if it were litigated. This information is being brought to the Examiner's attention so that he has an opportunity to independently consider these issues.

Also enclosed are excerpts from a transcript of a deposition of inventor Mark Miller, which took place on February 24, 2004, in connection with the above-mentioned litigation. The reason for bringing this to the Examiner's attention is to be forthcoming with the fact that Mr. Miller mistakenly stated that he withheld trade secrets concerning carbon dioxide concentrations from the specification of the '249 patent, which is the same specification as this continuation application. However, upon further examination during the deposition, Mr. Miller did correct himself and noted that he had not recently read the '249 patent, and that after reviewing the '249 patent he believed that the trade secrets were indeed disclosed in the specification. The reason for disclosing this material is that, out of the context of the entire deposition, the statements made by Mr. Miller concerning the failure to disclose a trade secret may be regarded as being material to patentability. However, the later clarification of this issue shows that no such failure to disclose actually occurred. The Examiner is encouraged to review this material and take it into account when further examining the application.

Additional materials not derived from the above-discussed litigation are also enclosed.

Pursuant to 37 CFR 1.56, the attention of the Patent and Trademark Office is hereby directed to the reference(s) listed on the attached PTO-1449. Unless otherwise indicated herein, one copy of each reference is attached. It is respectfully requested that the information be expressly considered during the prosecution of this application, and that the reference(s) be made of record therein and appear among the "References Cited" on any patent to issue therefrom. Applicants respectfully request the Examiner return an initialed copy of the enclosed Form PTO-1449 to Applicants with the next Office communication to indicate that the reference(s) has been considered, per MPEP § 609.

This Information Disclosure Statement is being filed more than three months after the U.S. filing date AND after the mailing date of the first Office Action on the merits, but before the mailing date of a Final Rejection or Notice of Allowance.

Please charge Deposit Account 033975 in the amount of \$180.00 payment of the fee under 37 CFR 1.17(p). Please credit or debit Deposit Account 033975 as needed to ensure consideration of the disclosed information.

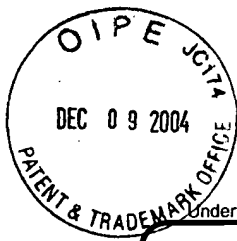
Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Bryan P. Collins', with a stylized flourish at the end.

Bryan P. Collins
Registration Number: 43560
Customer Number: 00909

Date: December 9, 2004

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PTO/SB/17 (10-04 v2)
Approved for use through 07/31/2006. OMB 0651-0032
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
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FEE TRANSMITTAL for FY 2005

Effective 10/01/2004. Patent fees are subject to annual revision.

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$ 180.00

Complete if Known

Application Number	10/806,223
Filing Date	March 23, 2004
First Named Inventor	MARK H MILLER
Examiner Name	Kurt C. Rowan
Art Unit	3643
Attorney Docket No.	009554-0308963

METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit card ☐ Money Order ☐ Other ☐ None

☒ Deposit Account:

Deposit
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Deposit
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The Director is authorized to: (check all that apply)

☒ Charge fee(s) indicated below ☐ Credit any overpayments

☒ Charge any additional fee(s) or any underpayment of fee(s)

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FEE CALCULATION

1. BASIC FILING FEE

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1001	790	2001	395	Utility filing fee	
1002	350	2002	175	Design filing fee	
1003	550	2003	275	Plant filing fee	
1004	790	2004	395	Reissue filing fee	
1005	160	2005	80	Provisional filing fee	
SUBTOTAL (1)					(\$ 0.00

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

	Extra Claims	Fee from below	Fee Paid
Total Claims	-20** =	X	
Independent Claims	-3** =	X	
Multiple Dependent			

Large Entity		Small Entity		Fee Description
Fee Code	Fee (\$)	Fee Code	Fee (\$)	
1202	18	2202	9	Claims in excess of 20
1201	88	2201	44	Independent claims in excess of 3
1203	300	2203	150	Multiple dependent claim, if not paid
1204	88	2204	44	** Reissue independent claims over original patent
1205	18	2205	9	** Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) (\$ 0.00

**or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)

3. ADDITIONAL FEES

Large Entity Small Entity

Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description	Fee Paid
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet	
1053	130	1053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for ex parte reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	110	2251	55	Extension for reply within first month	
1252	430	2252	215	Extension for reply within second month	
1253	980	2253	490	Extension for reply within third month	
1254	1,530	2254	765	Extension for reply within fourth month	
1255	2,080	2255	1,040	Extension for reply within fifth month	
1401	340	2401	170	Notice of Appeal	
1402	340	2402	170	Filing brief in support of an appeal	
1403	300	2403	150	Request for oral hearing	
1451	1,510	1451	1,510	Petition to institute a public use proceeding	
1452	110	2452	55	Petition to revive - unavoidable	
1453	1,370	2453	685	Petition to revive - unintentional	
1501	1,370	2501	685	Utility issue fee (or reissue)	
1502	490	2502	245	Design issue fee	
1503	660	2503	330	Plant issue fee	
1460	130	1460	130	Petitions to the Commissioner	
1807	50	1807	50	Processing fee under 37 CFR 1.17(q)	
1806	180	1806	180	Submission of Information Disclosure Stmt	180.00
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	790	2809	395	Filing a submission after final rejection (37 CFR 1.129(a))	
1810	790	2810	395	For each additional invention to be examined (37 CFR 1.129(b))	
1801	790	2801	395	Request for Continued Examination (RCE)	
1802	900	1802	900	Request for expedited examination of a design application	

Other fee (specify)

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$ 180.00

SUBMITTED BY

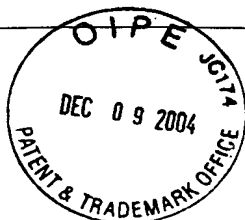
(Complete if applicable)

Name (Print/Type)	Bryan P. Collins	Registration No. (Attorney/Agent)	43560	Telephone	703. 905.2038
Signature		Date	December 9, 2004		

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

This collection of information is required by 37 CFR 1.17 and 1.27. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



Atty.
Dkt. No.

M#

Client Ref.

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INFORMATION DISCLOSURE STATEMENT BY APPLICANT

Applicant: American Biophysics Corporation

Appln. No.: 10/806,223

Filing Date: March 23, 2004

Date: December 1, 2004

Page

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of

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Examiner: Kurst C. Rowan

Group Art Unit: 3643

U.S. PATENT DOCUMENTS

Examiner's Initials*	Document Number	Date MM/YYYY	Name (Family Name of First Inventor)	Class	Sub Class	Filing Date (if appropriate)
	AR 6,145,243 C1	7/8/03	Wigton et al.			1/21/98
	BR 4,802,303	2/7/89	Floyd III			2/29/88
	CR 4,829,978	5/16/89	Schlosser			2/22/87
	DR 5,238,681	8/24/93	Chang et al.			2/14/92
	ER 5,282,334	2/1/94	Kimura et al.			4/17/89
	FR 5,408,970	4/25/95	Burkhard et al.			5/2/94
	GR 5,490,349	2/13/96	Muramatsu			9/27/93
	HR 5,501,033	3/26/96	Wefler			5/2/94
	IR 5,644,866	7/8/97	Katsuda et al.			7/10/95
	JR 4,891,904	1/9/90	Tabita			4/27/89
	KR 4,249,673	2/10/81	Katoh et al.			2/21/79

FOREIGN PATENT DOCUMENTS

Document Number	Date MM/YYYY	Country	Inventor Name	English Abstract	Translation Readily Available
				Enclosed	No
LR					
MR					
NR					

OTHER (Including in this order Author, Title, Periodical Name, Date, Pertinent Pages, etc.)

OR	D.P. Wilton et al. "Air Flow Direction and Velocity in Light Trap Design", Ent. Exp. & Appl. 15 (1972) 377-386				
PR	D.L. Klime, "Olfactory Attractants for Mosquito Surveillance and Control: 1-Octen-3-OL", Journal of the American Mosquito Control Association, 10(2):280-287, 1994				
QR	Braverman et al., "Attractiveness of Vertebrate Hosts to Culex pipiens (Diptera: Culicidae) and Other Mosquitoes in Israel", Journal of Medical Entomology, Vol. 28, No.1, 1/91, p. 133-138				
RR	Jacobson et al., "Chemical Insect Attractants", Science, 6/28/63, Vol. 140 No. 3574, p. 1367-1374				
SR	Weiting et al., "The Olfactory Responses of Flies in a New Type of Insect Olfactometer", Journal of Economic Entomology, Vol. 32, No. 1, p. 24-29				
TR	Excerpts from Deposition of Mark Miller, dated February 24, 2004				
UR	Owners Manual for Flowtron Skeeter Eater				
VR	Galaxie Advertisement Article				
WR	Translation of Japanese Patent No. 2-63679				
XR	Translation of Japanese Patent No. 64-14128				
YR	J.L. Shipp article "Evaluation of a Portable Co ₂ Generator For Sampling Black Flies", December 1985				

Examiner

Date Considered:

*EXAMINER: Initial if citation considered, whether or not citation is in conformance with MPEP § 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to Applicant.